



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5247

Introduced 2/3/2010, by Rep. Susana A. Mendoza

SYNOPSIS AS INTRODUCED:

820 ILCS 175/30
820 ILCS 175/70
820 ILCS 175/95

Amends the Day and Temporary Labor Services Act. Provides that a third party client is required to pay wages and related payroll taxes to a licensed day and temporary labor service agency for services performed by the day or temporary laborer for the third party client according to payment terms outlined on invoices, service agreements, or stated terms provided by the day and temporary labor service agency. Provides that a third party client who fails to comply is subject to the penalties provided in the Act. Provides that a day and temporary labor service agency aggrieved by a violation of the Act or any rule adopted under the Act by a third party client may file suit in circuit court of Illinois, in the county where the alleged offense occurred or where the day and temporary labor service agency which is party to the action is located, after a review by the Department of Labor of the alleged violation of the Act. Effective immediately.

LRB096 15053 RLC 30633 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Day and Temporary Labor Services Act is
5 amended by changing Sections 30, 70, and 95 as follows:

6 (820 ILCS 175/30)

7 Sec. 30. Wage Payment and Notice.

8 (a) At the time of payment of wages, a day and temporary
9 labor service agency shall provide each day or temporary
10 laborer with a detailed itemized statement, on the day or
11 temporary laborer's paycheck stub or on a form approved by the
12 Department, listing the following:

13 (1) the name, address, and telephone number of each
14 third party client at which the day or temporary laborer
15 worked. If this information is provided on the day or
16 temporary laborer's paycheck stub, a code for each third
17 party client may be used so long as the required
18 information for each coded third party client is made
19 available to the day or temporary laborer;

20 (2) the number of hours worked by the day or temporary
21 laborer at each third party client each day during the pay
22 period. If the day or temporary laborer is assigned to work
23 at the same work site of the same third party client for

1 multiple days in the same work week, the day and temporary
2 labor service agency may record a summary of hours worked
3 at that third party client's worksite so long as the first
4 and last day of that work week are identified as well. The
5 term "hours worked" has the meaning ascribed to that term
6 in 56 Ill. Adm. Code 210.110 and in accordance with all
7 applicable rules or court interpretations under 56 Ill.
8 Adm. Code 210.110;

9 (3) the rate of payment for each hour worked, including
10 any premium rate or bonus;

11 (4) the total pay period earnings;

12 (5) all deductions made from the day or temporary
13 laborer's compensation made either by the third party
14 client or by the day and temporary labor service agency,
15 and the purpose for which deductions were made, including
16 for the day or temporary laborer's transportation, food,
17 equipment, withheld income tax, withheld social security
18 payments, and every other deduction; and

19 (6) any additional information required by rules
20 issued by the Department.

21 (a-1) For each day or temporary laborer who is contracted
22 to work a single day, the third party client shall, at the end
23 of the work day, provide such day or temporary laborer with a
24 Work Verification Form, approved by the Department, which shall
25 contain the date, the day or temporary laborer's name, the work
26 location, and the hours worked on that day. Any third party

1 client who violates this subsection (a-1) may be subject to a
2 civil penalty not to exceed \$500 for each violation found by
3 the Department. Such civil penalty may increase to \$2,500 for a
4 second or subsequent violation. For purposes of this subsection
5 (a-1), each violation of this subsection (a-1) for each day or
6 temporary laborer and for each day the violation continues
7 shall constitute a separate and distinct violation.

8 (b) A day and temporary labor service agency shall provide
9 each worker an annual earnings summary within a reasonable time
10 after the preceding calendar year, but in no case later than
11 February 1. A day and temporary labor service agency shall, at
12 the time of each wage payment, give notice to day or temporary
13 laborers of the availability of the annual earnings summary or
14 post such a notice in a conspicuous place in the public
15 reception area.

16 (c) At the request of a day or temporary laborer, a day and
17 temporary labor service agency shall hold the daily wages of
18 the day or temporary laborer and make either weekly, bi-weekly,
19 or semi-monthly payments. The wages shall be paid in a single
20 check, or, at the day or temporary laborer's sole option, by
21 direct deposit or other manner approved by the Department,
22 representing the wages earned during the period, either weekly,
23 bi-weekly, or semi-monthly, designated by the day or temporary
24 laborer in accordance with the Illinois Wage Payment and
25 Collection Act. Vouchers or any other method of payment which
26 is not generally negotiable shall be prohibited as a method of

1 payment of wages. Day and temporary labor service agencies that
2 make daily wage payments shall provide written notification to
3 all day or temporary laborers of the right to request weekly,
4 bi-weekly, or semi-monthly checks. The day and temporary labor
5 service agency may provide this notice by conspicuously posting
6 the notice at the location where the wages are received by the
7 day or temporary laborers.

8 (d) No day and temporary labor service agency shall charge
9 any day or temporary laborer for cashing a check issued by the
10 agency for wages earned by a day or temporary laborer who
11 performed work through that agency.

12 (e) Day or temporary laborers shall be paid no less than
13 the wage rate stated in the notice as provided in Section 10 of
14 this Act for all the work performed on behalf of the third
15 party client in addition to the work listed in the written
16 description.

17 (f) The total amount deducted for meals, equipment, and
18 transportation may not cause a day or temporary laborer's
19 hourly wage to fall below the State or federal minimum wage.
20 However, a day and temporary labor service agency may deduct
21 the actual market value of reusable equipment provided to the
22 day or temporary laborer by the day and temporary labor service
23 agency which the day or temporary laborer fails to return, if
24 the day or temporary laborer provides a written authorization
25 for such deduction at the time the deduction is made.

26 (g) A day or temporary laborer who is contracted by a day

1 and temporary labor service agency to work at a third party
2 client's worksite but is not utilized by the third party client
3 shall be paid by the day and temporary labor service agency for
4 a minimum of 4 hours of pay at the agreed upon rate of pay.
5 However, in the event the day and temporary labor service
6 agency contracts the day or temporary laborer to work at
7 another location during the same shift, the day or temporary
8 laborer shall be paid by the day and temporary labor service
9 agency for a minimum of 2 hours of pay at the agreed upon rate
10 of pay.

11 (h) A third party client is required to pay wages and
12 related payroll taxes to a licensed day and temporary labor
13 service agency for services performed by the day or temporary
14 laborer for the third party client according to payment terms
15 outlined on invoices, service agreements, or stated terms
16 provided by the day and temporary labor service agency. A third
17 party client who fails to comply with this subsection (h) is
18 subject to the penalties provided in Section 70 of this Act.

19 (Source: P.A. 94-511, eff. 1-1-06; 95-499, eff. 8-28-07.)

20 (820 ILCS 175/70)

21 Sec. 70. Penalties.

22 (a) A day and temporary labor service agency or third party
23 client that violates any of the provisions of this Act or any
24 rule adopted under this Act shall be subject to a civil penalty
25 not to exceed \$6,000 for violations found in the first audit by

1 the Department. Following a first audit, a day and temporary
2 labor service agency or third party client shall be subject to
3 a civil penalty not to exceed \$2,500 for each repeat violation
4 found by the Department within 3 years. For purposes of this
5 subsection, each violation of this Act for each day or
6 temporary laborer and for each day the violation continues
7 shall constitute a separate and distinct violation. In
8 determining the amount of a penalty, the Director shall
9 consider the appropriateness of the penalty to the day and
10 temporary labor service agency or third party client charged,
11 upon the determination of the gravity of the violations. For
12 any violation determined by the Department to be willful which
13 is within 3 years of an earlier violation, the Department may
14 revoke the registration of the violator, if the violator is a
15 day and temporary labor service agency. The amount of the
16 penalty, when finally determined, may be:

17 (1) Recovered in a civil action brought by the Director
18 of Labor in any circuit court. In this litigation, the
19 Director of Labor shall be represented by the Attorney
20 General.

21 (2) Ordered by the court, in an action brought by any
22 party for a violation under this Act, to be paid to the
23 Director of Labor.

24 (b) The Department shall adopt rules for violation hearings
25 and penalties for violations of this Act or the Department's
26 rules in conjunction with the penalties set forth in this Act.

1 Any administrative determination by the Department as to
2 the amount of each penalty shall be final unless reviewed as
3 provided in Section 60 of this Act.

4 (Source: P.A. 94-511, eff. 1-1-06.)

5 (820 ILCS 175/95)

6 Sec. 95. Private Right of Action.

7 (a) A person aggrieved by a violation of this Act or any
8 rule adopted under this Act by a day and temporary labor
9 service agency or a third party client may file suit in circuit
10 court of Illinois, in the county where the alleged offense
11 occurred or where any day or temporary laborer who is party to
12 the action resides, without regard to exhaustion of any
13 alternative administrative remedies provided in this Act. A day
14 and temporary labor service agency aggrieved by a violation of
15 this Act or any rule adopted under this Act by a third party
16 client may file suit in circuit court of Illinois, in the
17 county where the alleged offense occurred or where the day and
18 temporary labor service agency which is party to the action is
19 located, after a review by the Department of the alleged
20 violation of this Act. Actions may be brought by one or more
21 day or temporary laborers for and on behalf of themselves and
22 other day or temporary laborers similarly situated. A day or
23 temporary laborer whose rights have been violated under this
24 Act by a day and temporary labor service agency or a third
25 party client or a day and temporary labor service agency whose

1 rights have been violated under this Act by a third party
2 client is entitled to collect:

3 (1) in the case of a wage and hour violation, the
4 amount of any wages, salary, employment benefits, or other
5 compensation denied or lost to the day or temporary laborer
6 or day and temporary labor service agency by reason of the
7 violation, plus an equal amount in liquidated damages;

8 (2) in the case of a health and safety or notice
9 violation, compensatory damages and an amount up to \$500
10 for the violation of each subpart of each Section;

11 (3) in the case of unlawful retaliation, all legal or
12 equitable relief as may be appropriate; and

13 (4) attorney's fees and costs.

14 (b) The right of an aggrieved person to bring an action
15 under this Section terminates upon the passing of 3 years from
16 the final date of employment by the day and temporary labor
17 agency or the third party client or upon the passing of 3 years
18 from the date of termination of the contract between the day
19 and temporary labor service agency and the third party client.

20 This limitations period is tolled if a day labor employer has
21 deterred a day and temporary labor service agency or day or
22 temporary laborer's exercise of rights under this Act by
23 contacting or threatening to contact law enforcement agencies.

24 (Source: P.A. 94-511, eff. 1-1-06.)

25 Section 99. Effective date. This Act takes effect upon
26 becoming law.